



# City of Seattle

## Ethics and Elections Commission

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April 23, 2010

**Via e-mail Attachment**

Dear :

I am in receipt of your February 25<sup>th</sup> letter where, seeking confidentiality under the Whistleblower ordinance, you express concerns over the waiver of a City taxpayer's penalties and interest by Department of Executive Administration (DEA) Director Fred Podesta. We have reviewed your letter and conducted a preliminary inquiry into the facts surrounding the waiver and find no issues that warrant an investigation by the Seattle Ethics and Election Commission (SEEC) staff.

An investigation under SMC 4.20.800 et. seq., the Whistleblower Code, is undertaken by the Commission staff if after a preliminary inquiry there is probable "improper governmental conduct." The term "improper governmental conduct" is defined in the ordinance to include a violation of federal, state and local laws; an abuse of authority; the creation of a substantial or specific danger to the public health or safety; or a gross waste of public funds.

Your letter questions the legality of the DEA actions which effectively waived payment by Lilien LLC [the "Taxpayer"] of approximately \$6,200.

City ordinance Title 5 - Revenue, Finance and Taxation controls in this situation. SMC 5.55.250 states:

Charge-off of Uncollectible taxes. The Director may charge off any tax, *penalty or interest* that is owed by a taxpayer, if the Director ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer."  
[Emphasis added]

Our inquiry shows that in January 2010, a letter was sent to all holders of a City of Seattle business license informing them that outstanding taxes would preclude

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them from renewing their business license. When the Taxpayer attempted to renew his business license he was told of an outstanding tax balance. The Taxpayer immediately called DEA. When confronted with this, the Taxpayer asserted that in 2007, a City Tax Enforcement Officer told the Taxpayer that if the base tax due the City of Seattle was paid at that time then any penalty and interest on the base tax would be waived. The file indicates that the Taxpayer did make a payment in September 2007.

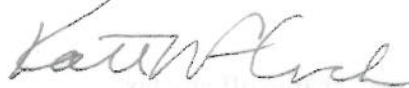
We made inquiries and found that DEA Director, Fred Podesta, delegated to Ms. Denise Movius, the task of determining the accuracy of the taxpayer's assertion. Ms. Movius found the 2007 payment and a notice of non-payment being placed into DEA records in March 3, 2008. She was not able to find any verification that the Taxpayer had been provided notice of any taxes due after the date of the Taxpayer's original payment in September 2007.

Ms. Movius spoke with the Enforcement Officer who contradicted the Taxpayer. Weighing the evidence and after speaking with the Taxpayer, Ms. Movius found the Taxpayer to be persuasive and concluded that, even if there had not been a City agreement to waive interest and penalties, the collections costs would be greater than the amount collected.

Given that the Taxpayer paid at or about the time of his asserted "promise of waiver," along with both the lack of enforcement efforts after the payment and the lack of evidence indicating notice to the Taxpayer, the SEEC staff has reached the conclusion that the Director of DEA's exercise of delegated discretion did not violate SMC 5.55.250, and therefore no "improper governmental conduct" as defined by SMC 4.20.850 occurred. For this reason we will not be pursuing this matter further.

Thank you for your letter.

Regards,



Kate Flack  
SEEC Investigator